

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Petitions of the Verizon Telephone)	WC Docket No. 06-172
Companies for Forbearance Pursuant to)	
47 U.S.C. § 160(c) in the Boston, New)	
York, Philadelphia, Pittsburgh,)	
Providence and Virginia Beach)	
Metropolitan Statistical Areas)	
)	

COMMENTS OF THE CITY OF PHILADELPHIA

ON

**THE PETITION OF THE VERIZON TELEPHONE COMPANIES
FOR FORBEARANCE PURSUANT TO 47 U.S.C. § 160(C) IN
THE PHILADELPHIA METROPOLITAN STATISTICAL AREA**

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I. INTRODUCTION AND SUMMARY

Pursuant to section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, the City of Philadelphia opposes the Petition of the Verizon Telephone Companies ("Verizon") for Forbearance Pursuant to 47 U.S.C. § 160 in the Philadelphia Metropolitan Statistical Area ("Philadelphia MSA"). As demonstrated herein, the relief requested in Verizon's Petition ("Verizon Petition") is barred by the plain language of the Telecommunications Act of 1996 (the "Act"). Moreover, Verizon has altogether failed to meet the burden required by the Act for forbearance. The Verizon Petition accordingly must be denied.

Verizon bears a heavy burden in proving that it meets the statutory requirements to conditions of obtain forbearance from Section 251(c) of the Act. Under 47 U.S.C. § 160 ("Section 160"), the proponent of a forbearance petition must satisfy three statutory requirements, and the Commission must "deny a petition for forbearance if it finds that any one of the three prongs is unsatisfied."¹ Specifically, Verizon must establish that: 1) enforcement of the regulation is not necessary to ensure that charges, practices, classifications, or regulations are just and reasonable, and are not unjustly or unreasonably discriminatory; 2) enforcement of the regulation or provision is not necessary to protect consumers; and 3) forbearance from applying such provision or regulation is consistent with the public interest.² In making such determinations, the Commission must also consider, pursuant to section 160(b), "whether forbearance from enforcing the provision or

¹ *Cellular Telecommunications & Internet Assn. v. FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003).

² 47 U.S.C. § 160(a).

regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.”³ Most significantly, Section 160(d) specifies that “the Commission may not forbear from applying the requirements of section 251(c) or 271 . . . until it determines that those requirements have been fully implemented.”⁴ Even a cursory application of the Section 160 standard demonstrates that the Verizon Petition should be denied.

As demonstrated in detail below, the Verizon Petition fails to establish that any of these statutory requirements for forbearance have been met in Philadelphia MSA. In fact, if the relief sought by the Verizon Petition is granted, there will be no enforcement of a regulation that is necessary to protect consumers, which is plainly against the public interest. Furthermore, it is all but certain that forbearance will neither promote nor enhance competition among providers of telecommunications services in this marketplace, but will significantly reduce, if not eliminate, competition for the services on which the large majority of Philadelphia consumers depend.

In sum, Verizon remains overwhelmingly dominant in its local exchange and exchange access markets with no clear competition for affordable local telephone service in the Philadelphia MSA. Due to the absence of any clear competition in the Philadelphia MSA, enforcement of Section 251(c) is necessary for the protection of consumers to prevent Verizon from discriminating against other carriers or

³ Id. at § 160(b).

⁴ Id. at § 160(d).

leveraging the prices and availability of its own network to exclude competition. For the foregoing reasons, and others discussed herein, forbearance from applying Section 251(c) is inconsistent with the public interest of fostering competition.

II. THE COMMISSION SHOULD NOT FORBEAR FROM APPLYING SECTION 251(c) REGULATORY REQUIREMENTS TO VERIZON

As set forth in detail below, the Commission should not forbear from applying Section 251(c) regulatory requirements to Verizon because Verizon has failed to provide adequate justification or data to show that any, let alone all three, prongs of Section 160(a) have been satisfied. Granting Verizon the relief requested will reduce the choices consumers have in the Philadelphia telecommunications marketplace. The serious economic impact on Philadelphia's many thousands of low income residents by itself shows that continued 251(c) regulation is necessary to protect these consumers. If competition is eliminated, such consumers would pay more for the traditional telephone service and could not afford the alternatives. Forbearance therefore cannot be consistent the public interest.

A. Verizon Fails to Satisfy Each of the Statutory Criteria for Forbearance

The Commission must deny Verizon's Petition because Verizon has not met the stringent standards of Section 160(a). Verizon has failed to show that (1) enforcement of Section 251(c) is not necessary to ensure that its charges, practices, classifications, and regulations are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of Section 251(c) is not necessary for the protection of consumers; and (3) forbearance from applying Section 251(c) is consistent with the public interest. Verizon's Petition falls well short of the hard evidence necessary to satisfy the criteria of Section 160(a).

Verizon goes out of its way to paint an embellished picture of effective competition in the Philadelphia MSA. Verizon dwells on issues related to the retail market, such as “intermodal competition” from wireless, voice over Internet protocol (“VoIP”) providers, and cable operators, while avoiding the fundamental issue: that Verizon is overwhelmingly dominant in the provision of wholesale loops and transport in the Philadelphia MSA, and that there are no alternatives for competitive local exchange carriers (CLECs) other than Verizon’s ubiquitous network. Eliminating Section 251(c) regulation will eliminate competition for great majority of Philadelphia consumers, residential and business alike, who still receive telephone and even data service over copper loops.

1. Enforcement of Section 251(c) is Necessary to Ensure that Verizon’s Charges and Practices are Just, Reasonable And Nondiscriminatory

Verizon argues that it should be free of the regulatory obligations imposed by Section 251(c) because it “faces competition from a wide range of technologies and an even broader array of providers.” Verizon Petition, page 2. The reality is that Verizon remains overwhelmingly dominant in its local exchange and exchange access markets in the Philadelphia MSA. Accordingly, for the reasons set forth below, enforcement of Section 251(c) is necessary to ensure that Verizon’s charges and practices are just, reasonable and not unjustly or unreasonably discriminatory.

a. Lack of Mass Market Competition for Affordable Local Telephone Service in the Philadelphia MSA

While there is in theory a wide range of alternatives to traditional local telephone service in the Philadelphia MSA, the actual penetration of these alternative services has yet to occur to an extent that creates meaningful competition to the Verizon monopoly in this marketplace.

i. Competition from Cable Television Operators

Comcast Cable Communications (“Comcast”) is the dominant cable operator in the Philadelphia MSA and the dominant source of the competition Verizon alleges from cable’s telephony business. Based on the Comcast 2005 Annual Report to Shareholders, of the roughly 21.4 million subscribers that Comcast has nationwide, only 1.3 million, or 6 percent also purchase voice services from Comcast. In the same report, Comcast indicates that it has roughly 1.8 million subscribers in the Philadelphia area television market. Assuming Comcast’s subscription rate for voice is comparable to its national average (an assumption unchallenged by the Verizon Petition), Comcast has approximately 108,000 telephone customers in the entire Philadelphia area television market. Based on Nielsen Media Research estimates of 2.9 million television households in this television market,⁵ that is a penetration rate of roughly 3.7 percent. For the demographic reasons described below, the penetration rate in Philadelphia County is certainly much less. It thus appears that the dominant cable provider in Philadelphia MSA does not yet present the strong competitive challenge to

⁵ Source: Nielsen Media Research, 2006-2007 Market Ranks Revised, <http://www.nielsenmedia.com/nc/portal/site/Public/menuitem.55dc65b4a7d5adff3f65936147a062a0/?vgnextoid=6573d3b8b0c3d010VgnVCM100000ac0a260aRCRD>.

Verizon's traditional telephone service that its petition would have the Commission believe.

Regardless of Comcast's strong marketing efforts, the number of its telephone service customers has remained flat over the last three years according to publicly available information, with Comcast reporting 1.3 million voice subscribers at the end of 2003 and the same 1.3 million phone subscribers at the end of 2005. Again, this hardly indicates that Comcast has yet succeeded in mounting a significant competitive challenge to Verizon's overwhelming dominance of the Philadelphia market, or that forbearance from federal regulatory requirements is warranted by any such challenge. Note also that the Verizon Petition presents no evidence to demonstrate that each Comcast voice subscriber uses Comcast phone service as a replacement for Verizon telephone service; thus, the extent of the competition could be even less than these data indicate.

In addition, while the Verizon Petition states that "there is no question that these cable operators are offering voice service that is comparable to Verizon's," the Verizon Petition fails to mention that the voice services are only available with the purchase of both a cable modem and replacement telephone equipment; or that the cable service will handle broadband data and voice at the same time without impairing the voice service only if a "quality of service" router is also installed. The need to purchase or lease this additional equipment makes the cost of switching service providers high for consumers looking for a comparable alternative to Verizon's traditional voice service. Switching providers also requires altering the

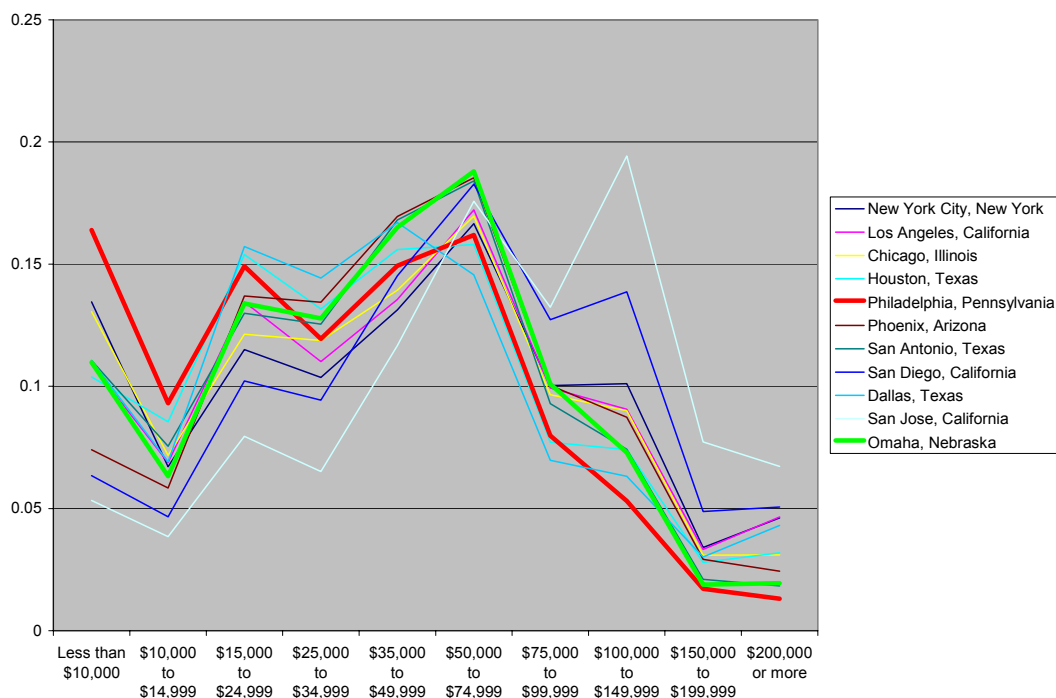
equipment in the home or business to access those services, making it a costly and burdensome proposition to switch providers. These factors lessen the extent to which voice over cable can be considered effective competition to Verizon, particularly for the low and moderate income residents who predominate in Philadelphia, as discussed below.

All of this suggests that competition to Verizon from cable operators, to the extent it exists at all, is found only in certain demographic segments consisting of residents that have the technological sophistication to need cable broadband and the relatively high discretionary income to afford it. It should be recognized that the overwhelming majority of Philadelphia residents do not have cable broadband service and are not in the high income, highly educated segments of the city's population which are likely to subscribe to cable broadband service, as demonstrated in Graph 1 below.⁶ The graph represents income distribution in the ten largest cities of the United States, plus Omaha, Nebraska. Philadelphia, as noted by the thick red line, is clearly distinguished by the highest proportions in the lowest income segments.

Graph 1: Population By Income Segments, Ten Largest U.S. Cities Plus Omaha, Nebraska

From U.S. Census Bureau, 2005 American Community Survey

⁶ Based on data from U.S. Census Bureau, 2005 American Community Survey, www.census.gov.



According to 2005 Census data,⁷ Philadelphia has a population of 1,402,099, with 24.5 percent of individuals living below poverty level (substantially higher than the national average of 13.3 percent), and 19.9 percent of families living below poverty level (substantially greater than the national average of 10.2 percent).⁸ Not only does a quarter of the Philadelphia population live in poverty, but the City has half of Pennsylvania's poor.⁹ These low income individuals and families depend on traditional telephone service because they cannot afford the costly service packages

⁷ See U.S. Census Bureau, 2005 American Community Survey, www.census.gov.

⁸ In the City of Philadelphia, the median per capita income is \$18,399 and the median household income is \$33,062. (U.S. Census Bureau 2003, <http://www.census.gov/acs/www/Products/Profiles/Single/2003/ACS/Tabular/050/05000US421013.htm>); in 2000, 109,237 households (18.5 percent of the total) had an annual household income below \$10,000 and an additional 49,035 households (8.3 percent of the total) had an annual income between \$10,000 and \$15,000, while the 102,894 households with retirement income had a mean retirement income of \$14,751. (U.S. Census Bureau, 2000). These income levels cannot support significant penetration rates for cable broadband or any of the competitive services Verizon cites to justify forbearance.

⁹ Source: Philadelphia 2007: Prospects and Challenges, Basil J. Whiting and Tony Proscio, Pew Charitable Trusts.

– upwards of \$100.00 per month – by which voice over cable service is marketed.

Without competition among providers of traditional telephone service, telephone costs will increase such low income consumers. The continued enforcement of Section 251(c) is necessary to protect these consumers and therefore is clearly in the public interest.

The City urges the Commission not to abandon the City's low income telephone subscribers by granting Verizon relief from competition for the one form of telephone service, traditional service over copper loops, they can best afford.

ii. Competition from Wireless Voice Service

The Verizon Petition relies on the argument that wireless providers compete directly with Verizon's traditional wireline service, and that customers are abandoning wireline service for wireless. Contrary to these unpersuasive arguments, wireless is not a substitute for wireline service and the competition allegedly presented by wireless does not justify forbearance.

First, the data offered by Verizon in no way supports its conclusion that significant numbers of telephone customers in the Philadelphia MSA are willing to give up their wireline service and replace it with wireless. Verizon presents no evidence of the numbers or percentages of customers in the Philadelphia MSA that are terminating Verizon local exchange service and relying exclusively on wireless. In fact, the Verizon Petition indicates that there are no sources that reliably compile such data. Verizon Petition, page 11. Given that a wireline account remains necessary for a reliable dial-up Internet connection or a DSL high-speed

Internet connection for the overwhelming majority of voice customers, the likelihood is small that large numbers of them are terminating traditional telephone service in favor of wireless, as opposed to acquiring wireless accounts in addition to their wireline accounts.

Furthermore, Verizon's argument for wireless competition, like its argument for competition from voice over cable, does not acknowledge the low income population segment that cannot switch to wireless in place of wireline, and will consequently have no protection against increases in wireline prices resulting from the elimination of competition. National studies have shown that the lack of internet access (dial-up or broadband access and a computer) is greatest at the lower income levels. In an October 2004 study, the School District of Philadelphia distributed 5,500 surveys on technology use to sixty schools city-wide for distribution to parents, and 1,931 surveys from forty-five schools were returned.¹⁰ The survey requested information regarding families' computer ownership, connectivity access and training needs. Based on the survey, approximately 58% of households reported having internet access at home. The percentage reported varied from as low as 25% to as high as 93% having home Internet access.¹¹ As demonstrated by the graph below, trendline results of the School District survey plainly show an inverse correlation between poverty levels and internet access.¹² As described above, according to 2005 census data, 24.5 percent of individuals and 19.9

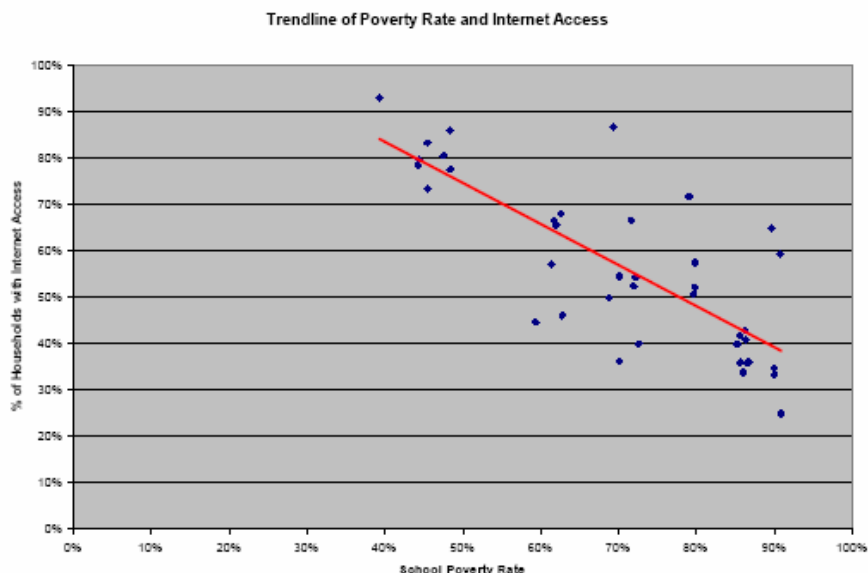
¹⁰ School District of Philadelphia, The Educational Technology Group, *Parent Access to Technology, Connectivity, Training and Online Resources*, October 2004.

¹¹ Id.

¹² Id.

percent of families in Philadelphia are living below poverty level. These low income residents are not in a position to replace traditional wireline service with wireless.

Graph 2: Philadelphia Schools Parent Survey of Internet Use and School Poverty Rate



It is significant that in 2005, Verizon Communications Inc.’s revenue from its Verizon Wireless domestic operations increased by \$4.6 billion while Verizon Communications Inc.’s domestic wireline revenue decreased by only \$405 million.¹³ It is likely that a significant percentage of customers who terminate Verizon

¹³ “Consolidated revenues in 2005 were higher by \$3,829 million, or 5.4% compared to 2004 revenues. The increase was primarily the result of significantly higher revenues in Domestic Wireless and higher International Revenues, partially offset by lower revenues at Domestic Telecom and the sale of Hawaii operations in the second quarter of 2005.” Verizon Communications Inc. Annual Report to Shareholders for 2005, page 16. Net of the decrease in International Revenues of \$97 million, Verizon’s communications revenue between wireline and wireless increased by over \$3.7 billion dollars. Since domestic wireline revenue decreased by merely \$405 million, and domestic wireless service revenue increased by over \$4.6 billion in the same time frame, it is highly likely that nearly all consumers who terminated their wireline service for wireless service merely converted from one Verizon business line to another.

wireline service are not abandoning Verizon but are rather switching to Verizon Wireless. If even ten percent of Verizon Wireless revenue is represented by former Verizon wireline customers converting to wireless, then Verizon itself represents virtually all of the competition to its wireline services in markets where Verizon provides both wireless and wireline services. Since Verizon Wireless is one of the dominant wireless service providers in the Philadelphia MSA, it is highly likely that a large percentage of consumers in this market who replaced Verizon wireline service with wireless service chose Verizon Wireless as their provider. In the Philadelphia MSA, it is simply not credible for Verizon to assert that the mere existence of facilities-based competition creates sufficient competition to justify forbearance under the standards of Section 160 when Verizon's subsidiary, Verizon Wireless, is a dominant provider of that facilities-based competition.

Competition among divisions, affiliates or wholly-owned subsidiaries of a monopoly is not the kind of competition that ensures market forces will protect consumers. Because Verizon does not report geographic segments in its public filings with sufficient detail to make a comparative analysis of its Philadelphia MSA wireless and wireline businesses, it is a fair assumption that such information does not support the Verizon Petition's claims of wireless competition, for the reasons here described.

iii. Competition from "Over-the-Top" VoIP Providers

VoIP providers that furnish voice service over the Internet rather than by means of their own facilities (so-called “over-the-top” VoIP) require broadband access at the customer’s premises, new customer telephones capable of carrying VoIP, and quality of service enabled routers to provide a voice service that is comparable to traditional telephone service. Like the voice services provided by cable operators, the cost associated with such special equipment limits the ability of many consumers in the Philadelphia MSA to take advantage of this alternate service and limits its competitive effect, particularly among the large proportion of low income individuals and families in this market. More importantly, the service is not available at all without Internet access, and both Philadelphia and national data on Internet access rates call into question the significance of competition from this source.

As reported in the Pew/Internet Home Broadband Adoption Report for 2006 (“Pew Report”), approximately 42% of American adults have a broadband connection in their homes capable of delivering VoIP products. Of those households, half use DSL for broadband access, typically over facilities owned and operated by the Bell operating companies. Of the 42 percent with broadband Internet access, only 3 percent actively use it for VoIP, which means that only 1.3 percent of households nationwide currently subscribe to over-the-top VoIP. If it is assumed that penetration in the Philadelphia MSA is similar to national penetration, then at most about 1.3 percent of Philadelphia MSA households subscribe to this alternative voice service. This is not significant competition to Verizon’s traditional

telephone service. The evidence is that in Philadelphia, Internet access and use is well below these national estimates. Overall Internet penetration in Philadelphia is estimated at 45%, including 92,552 households with broadband and 173,076 households with dial-up.¹⁴ In comparison, national Internet penetration for the United States is estimated at 69.6% penetration, or 210,080,067 Internet users as of November 2006, with 69,431,802 broadband subscribers as of July 2005.¹⁵ This is to be expected given the high proportion of low-income individuals and families discussed above. It is clear that actual VoIP subscribers can be only a tiny portion of the telephone service consumers in Philadelphia.

Finally, since all of those VoIP subscribers require broadband access, it is highly likely that a substantial percentage of them are Verizon DSL customers, again suggesting that the alleged “competition” is among Verizon business units. As noted above, this is not the kind of competition contemplated by Section 160, and does not justify the forbearance Verizon seeks.

iv. Competition from Wholesale Alternatives

Verizon states that “Verizon has in fact made attractive wholesale offerings available even when it has no obligation to do so. Following the Commission’s decision to eliminate the UNE platform, Verizon began offering its Wholesale Advantage service, which provides the same features and functionality of the UNE platform but at negotiated market rates.” Verizon Petition, page 14. This

¹⁴ Source: Pew Internet & American Life Project, U.S. Census Current Population Survey of 2001, Centris Research, Scarborough Research. Data are current estimates as of October 2004.

¹⁵ Source: Internet World Stats, Usage and Population Statistics, www.internetworldstats.com/America.htm.

argument is disingenuous. With the loss of the UNE platform, which had regulated pricing of Verizon network switches and transport facilities, competitive carriers had no choice but to enter into Verizon's Wholesale Advantage arrangements. True market competition would drive down prices under those contracts and Verizon would extend them for as long as possible. Verizon does not, of course, provide information about the terms of its Wholesale Advantage contracts or its projected future pricing for them. Without that information, it is impossible to determine whether they really evidence competition, and Verizon's reliance on their existence should be discounted. Note that Verizon cites Cavalier Telephone Mid-Atlantic, LLC and Broadview Networks, Inc. as examples of companies using their own switches to service customers – evidence, in Verizon's view, that competition does not require Section 251 regulation. Yet it is clear that in order to use the switches, Cavalier and Broadview require access to the very network elements that the Verizon Petition seeks relief from having to deliver to them. The appropriate conclusion is rather that Section 251(c) regulation is the most, probably the only, effective means of ensuring competition in the Philadelphia MSA.

b. Verizon Retains Enormous Market Power Despite Alleged Decline in its Retail Lines

Verizon seeks to convince the Commission that an alleged decline in its retail residential switched access lines is sufficient evidence of competitive alternatives to justify forbearance. *See* Verizon Petition, page 16-17. This argument is without merit. Contrary to Verizon's contention, the statute does not authorize the

Commission to forebear from imposing Section 251 unbundling obligations simply because Verizon is facing competition or experiencing a decline in retail switched access lines. In fact, Verizon still possesses enormous market power in both the retail and wholesale markets in the Philadelphia MSA, making the continued enforcement of Section 251 necessary to ensure reasonable and nondiscriminatory charges and practices by Verizon.

2. Enforcement of Section 251(c) is Necessary for the Protection of Consumers in the Philadelphia MSA

The argument of the Verizon Petition is that that the mere presence of competitors and competitive services in the Philadelphia MSA, coupled with a decline in a single Verizon retail business line, is sufficient evidence that market forces will protect consumers from monopolistic pricing and power. But market forces will protect consumers only where competition is so widespread and successful that monopolistic pricing and power are no longer possible. Given the limited nature of the competition from alternative service providers, as argued in detail above, there is no basis for Verizon's contention that their presence will prevent Verizon from discriminating unreasonably against other carriers or from leveraging the prices and availability of its own network to limit or exclude competition.

As further argued above, Verizon ignores the fact that Verizon itself is a significant, in some cases the dominant, provider of the competitive services that it suggests represent the intermodal threat to its wireline business. Again,

“competition” that consists of service delivered by a single monopolistic incumbent using different technologies does not protect the consumer from monopolistic pricing and power. The reduction Verizon describes in wireline customers and wireline revenue is an anticipated result of the Act, and does not by itself demonstrate the impact of competition or even an overall loss of Verizon customers, given that a customer who drops Verizon’s traditional wireline service is likely to have migrated to some other Verizon service. The true extent of competition with Verizon cannot be determined without accurate information showing the number of closed accounts that represent migration to a different Verizon service versus the number that represent migration to a competitor. Without this data, which Verizon certainly could provide, the Commission should not accept Verizon’s contention that market competition alone will protect Philadelphia consumers.

Additionally, the age demographics of Philadelphia, specifically, the high percentage of elderly population, further necessitates the enforcement of Section 251(c) for the protection of consumers in the Philadelphia MSA. Philadelphia has 12.7 percent of its population over the age of 65, the highest percentage of the ten largest cities in the United States.¹⁶ This segment of the consumer population is less likely to adopt new products, services, or technologies and, therefore, requires Section 251(c) protections from price leveraging or discriminatory practices.

Finally, the Verizon Petition wrongly assumes that the existence of competition in one market segment or one geographic or socioeconomic segment of the Philadelphia MSA is proof that competition exists consistently across all

¹⁶ See U.S. Census Bureau, 2005 American Community Survey, www.census.gov.

geographic and socioeconomic segments, and thus ensures that market forces will provide adequate protection to consumers whatever their socioeconomic status. Even if, contrary to fact, Verizon were able to show that there is a competitive market in the Philadelphia MSA in the provision of broadband service, to take the clear example, it would not follow that competition in the market for basic residential telephone service is strong enough to justify deregulation of that service. Broadband competition benefits the higher income consumers who typically purchase broadband, but for the majority of Philadelphia consumers – many of them low income consumers – competition in that market segment is meaningless, and certainly does not protect them against unreasonable rates for traditional telephone service. For the very large number of Philadelphia consumers who still depend on traditional telephone service, continued regulation under Section 251(c) is the only effective protection against monopolistic pricing.

3. Forbearance from Applying Section 251(c) is Inconsistent with the Public Interest

The failure of the Verizon Petition to demonstrate either of the first two elements required for a forbearance finding by itself establishes that forbearance would not be consistent with the public interest. As discussed in Section II.A. and B. above, Verizon remains overwhelmingly dominant in the marketplace with no clear competition for affordable local telephone service in the Philadelphia MSA. Due to the absence of any clear competition in the Philadelphia MSA, enforcement of Section 251(c) is necessary for the protection of consumers to prevent Verizon

from discriminating against other carriers or leveraging the prices and availability of its own network to exclude competition. As such, forbearance from applying Section 251(c) is inconsistent with the public interest.

In addition, it should be recognized that one practical effect of the Triennial Review Order and subsequent orders relieving Verizon and the other Bell operating companies of the obligation to unbundle their broadband fiber-to-the-home (*FTTH*) and fiber-to-the-curb (*FTTC*) networks has created a strong cost incentive to replace copper facilities with fiber facilities in lieu of maintaining and upgrading those loops. If forbearance relief is granted in the Philadelphia MSA, Verizon will have little incentive to modernize and upgrade copper loops and the technology that uses them. The result will be a lower quality of service for the many thousands of Philadelphia consumers who depend on traditional telephone service, and on the businesses and residents who depend on DSL service delivered over Verizon's copper loops. Such an outcome clearly is against the public interest.

4. Forbearance Will Not Promote Competition, and Therefore Must be denied under Section 160(b)

Verizon has not shown that forbearance from applying Section 251(c) will promote competitive market conditions, as required under Section 160(b).

Forbearance will not serve the public interest or promote competitive market conditions where, as here, it is likely to lead to an increase in wholesale prices for network elements without which CLECs cannot provide service. Where the effect

on competition may be harmful, the Commission must deny forbearance even if the individual threshold requirements of Section 160(a) have been met.

The threat to competition follows from the simple fact that Verizon continues to maintain monopolistic control of copper loops across the Philadelphia MSA. The elimination of certain, i.e. federally mandated, access to those loops at reasonable cost will jeopardize the viability of their businesses and therefore the continued existence of competition that all Philadelphia residents, whatever their income levels, can take advantage of. It will also threaten CLECs' ability to provide primary services and the redundant circuits that are used by public safety agencies and for homeland defense.

If the Commission grants the forbearance Verizon requests, the direct consequence will be to eliminate or severely weaken the one class of competitors in the Philadelphia MSA which is known with certainty to provide competition to Verizon: CLECs using the unbundled network elements that are the subject of the Verizon Petition. If Verizon is no longer required to offer such unbundled elements pursuant to the federal regulatory framework, it will be able to deny them service altogether or to establish a pricing structure that will render them uncompetitive and force them out of the marketplace. The effect will be to eliminate the only fully verifiable and measurable competition to Verizon in the Philadelphia MSA.

B. Verizon's Reliance on the Omaha Order is Without Merit

Verizon relies on the repeated contention that all issues in this proceeding have already been decided in favor of forbearance because the Commission granted forbearance in the Omaha MSA,¹⁷ which Verizon would have the Commission believe is indistinguishable from the Philadelphia MSA in all pertinent respects. Verizon’s reliance on the Omaha Order is misplaced and without merit. The Commission plainly stated in the Omaha Order that “each case must be judged on its own merits” and that the Commission “adopt[s] no rules of general applicability.” Omaha Order ¶ 2. The commission was even more unambiguous in stating: “We stress that our decision today is based on the totality of the record evidence particular to the Omaha MSA. The presence of a subset of similar facts in other markets . . . might result in a different outcome.” Omaha Order ¶ 14, fn 46.

As these Comments demonstrate in detail, the demographic facts particular to Philadelphia show that for a majority of consumers in this marketplace, competition with Verizon’s traditional telephone service has not yet reached and will not soon reach a level or a degree of demographic penetration that justifies forbearance under the statutory standard of Section 160. As set forth above, Philadelphia has a higher than average poverty level, for both individuals and households, and a lower than average internet penetration rate. Based on these statistics, Philadelphia will not soon reach a level penetration that justifies forbearance.

¹⁷ *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 219415 (2005) (“Omaha Order”). See, e.g., Verizon Petition, pages 1-2, 4, 6-7, 14, 16, 18-19, 24-26, and 28.

The City is of course not privy to detailed information about market penetration of non-traditional services in the Omaha MSA, that information having been redacted from the Omaha Order, but we believe that basic demographic facts show that Omaha and Philadelphia are very different marketplaces. The City of Philadelphia has a population of 1,406,415, with 24.5 percent of individuals living below the poverty level. In contrast, the City of Omaha has a population of 373,215, with only 15.3 percent of individuals living below the poverty level. These numbers represent more than 344,500 individuals living in poverty in Philadelphia and only 57,100 individuals living in poverty in Omaha. This disparity in the economic status of so many residents shows, in comparison with Omaha, that a large segment of Philadelphia's population cannot afford to switch to wireless or other alternative services in place of Verizon's traditional wireline service.

It is thus clear that Verizon's wholesale reliance on the Omaha Order is misplaced. The City urges the Commission to decide the Verizon Petition on the basis of the facts particular to the Philadelphia MSA. On that basis, the Verizon Petition must be denied.

III. CONCLUSION

For the foregoing reasons, the City of Philadelphia respectfully requests that the Commission deny Verizon's Petition for Forbearance.

Dated: March 5, 2007

Respectfully submitted,

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